



REPUBLIC OF KENYA



KENYA LAW
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**Mwakaë v Ong'era & 14 others (Environment & Land Case
92 of 2021) [2023] KEELC 21322 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21322 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 92 OF 2021**

JM KAMAU, J

OCTOBER 31, 2023

BETWEEN

SHADRACK NYABERI MWAKAE PLAINTIFF

AND

DAVID M OMOGANDA ONG'ERA 1ST DEFENDANT
BENEDICTO CHARANA ONGARO 2ND DEFENDANT
BERESI OURO 3RD DEFENDANT
OMANWA ATERA 4TH DEFENDANT
SIRO NYAMBORI 5TH DEFENDANT
OGECHI ISOE 6TH DEFENDANT
OURO MOITAI 7TH DEFENDANT
NAUMI GESARE OKINYI 8TH DEFENDANT
HENRY NYAKUNDI MOSE 9TH DEFENDANT
GRACE GILBERT 10TH DEFENDANT
BENEDICTO GICHANA OOKO 11TH DEFENDANT
KENYATTA OOKO 12TH DEFENDANT
MAISIBA OOKO 13TH DEFENDANT
ROSANA OOKO 14TH DEFENDANT
SIRO OMBORI 15TH DEFENDANT



RULING

1. On 21/3/2023 the Decree Holder filed an Application of even date seeking Court orders for eviction against the Judgment Debtors, their agents, representatives, successors or occupants by whatever name called from LR Numbers West Mugirango/Bosamaro/1468 and 1469 and all parcels of land excised therefrom.
2. The Applicant also sought for an order that the Officer Commanding Nyamira Police Station and/or officers under his/her directions to enforce and ensure total compliance with the Judgment and Decree of the Court and to provide security during the said eviction. He grounded his Application on the premise that the Judgment Debtors were ordered to vacate the suit premises and that they have failed to adhere to the terms of the stay of execution granted to them on 5/8/2022 which was given more than 1 year down the line. The Applicant contends that the Defendants are not keen on following the orders granted by the Court and have definitely remained on the suit land.
3. The Defendants/Judgment Debtors filed their grounds of opposition dated 27/6/2023 and written submissions dated 11/8/2023 which were filed in Court on 14/8/2023 maintaining that the Court should be reluctant to issue orders of execution/eviction when there is an Appeal pending hearing and proceeded to urge the Court to dismiss the Application by the plaintiff/Applicant
4. The Judgment Debtors have been given sufficient time and Notice to vacate the suit property and all the avenues sought by them to remain on the land have reached a dead end. There are no stay orders and the Defendants' Application for extension to comply with the conditions attached to the Stay granted having been rejected by this court, they have no option but to vacate the suit premises.
5. Under Order 22, Rule 29 (1) of the [Civil Procedure Rules](#),

“Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”
6. However, I wish to bring it to the attention of the Decree Holder herein that an Order of Eviction must be carried out in accordance with the [Constitution](#) and the law under which the dignity of the Evictee must be protected. He must be treated in a humane manner.
7. Under Article 28 of the [Constitution](#) of Kenya, 2010:

Human dignity

Every person has inherent dignity and the right to have that dignity respected and protected.
8. Under Article 19(2) of the [Constitution](#) of Kenya, 2010, on Rights and fundamental freedoms:

The purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.



9. Under Article 20 (4):

- (4) In interpreting the Bill of Rights, a court, tribunal or other authority shall promote—
 - (a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and Article 29. Every person has the right to freedom and security of the person, which includes the right not to be:-
 - (f) treated or punished in a cruel, inhuman or degrading manner.

10. Order 22, Rule 29 (1) of the [Civil Procedure Rules](#) being a subsidiary legislation is nevertheless subject to Section 152G of the [Land Act](#). And whereas Section 152A of the [Land Act](#) No 6 of 2012 as amended vide the [Land Laws \(Amendment\) Act](#) No 28 of 2016 provides that a person shall not unlawfully occupy private, community or public land, I wish to caution the Decree Holder that the eviction has to be conducted in a civil and humane manner as laid out in the [Constitution](#) of Kenya, 2010, and the [Land Act](#) as amended vide Act No 28 of 2016. Section 152B of the [Land Act](#), No 6 of 2012 provides for the mandatory procedures during eviction as follows: -

“an unlawful occupant of private, community or public land shall be evicted in accordance with this Act”.

11. What is the procedure to be followed?

Under Section 152G:

- 1. Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall be carried out in strict accordance with the following procedures-
 - a. be preceded by the proper identification of those taking part in the eviction or demolitions;
 - b. be preceded by the presentation of the formal authorizations for the action;
 - c. where groups of people are involved, government officials or their representatives to be present during an eviction;
 - d. be carried out in a manner that respects the dignity, right to life and security of those affected;
 - e. include special measures to ensure effective protection to groups and people who are vulnerable such as women, children, the elderly, and persons with disabilities;
 - f. include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;
 - g. include mechanisms to protect property and possessions left behind involuntarily from destruction;



- h. respect the principles of necessity and proportionality during the use of force; and
 - i. give the affected persons the first priority to demolish and salvage their property.
12. Having given the precautions above I hereby grant the Application dated 21/3/2023 with costs and further orders that the eviction be conducted with civility and with strict observance of the law by both sides
13. The Officer Commanding Nyamira Police Station and the officers under him are therefore ordered to supervise this eviction in accordance with the above provisions of the Land Act as well as the strict observance of Section 152H of the Act on disposal of property left after eviction.
14. The competent officer of the Commission or County Government, community owning a registered community land or owner of private land shall at least seven days from the date of the eviction, remove or cause to be removed or disposed by public auction, any unclaimed property that was left behind after an eviction from private, community or public land”.
15. The Court also cautions the Respondents to carry themselves with dignity during the exercise.
16. These are the Orders of the Court.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 31ST DAY OF OCTOBER, 2023.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant – Brenda

Kimaiyo for the Plaintiff

Osoro for the Defendants

